IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.36 OF 2007
IN
WRIT PETITION (PIL) NO.2713 OF 2005

People for Ethical Treatment of Animals & Anr. ..Petitioners.
Vs.
Union of India & Ors. ..Respondents.
And
Indian Motion Pictures Producers' Association ..Applicant.

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Shri Raj Panjwani for the Petitioners.

Shri D.D. Madon, Senior Advocate with Shri H.N. Thakore and Ms. Agnes Baradia i/b M/s. Thakore Jariwala & Associates for the Applicant in support of the Notice of Motion.

Shri Rajiv Chavan with Ms. Akhila Kaushik for Union of India.

Shri Sanjay Udeshi i/b M/s. Sanjay Udeshi & Co. for Respondent No.3.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

5th March, 2007.

P.C. :

1. The Notice of Motion before the Court has been taken out by the Indian Motion Pictures Producers' Association. The

relief that has been sought is a review, modification or variation of the judgment dated 22nd August, 2005 delivered by this Court to the extent to which certain directions have been issued to the Animal Welfare Board of India. The Applicant before the Court was not a party to the writ proceedings which culminated in the final judgment and order dated 22nd August, 2005 by which the Petition was disposed of. On 26th February, 2007 the Supreme Court dismissed a Special Leave Petition filed by the Union of India on the ground of delay.

2. The submission that has been urged at the hearing of the Motion is that the Performing Animals (Registration) Rules 2001 defined the expression 'prescribed authority' in Rule 2(g) and that as a result of an amendment made to the definition on 8th January, 2002 it is the Central Government and not the Animal Welfare Board which constitutes the prescribed authority. It is urged before the Court that the amended definition of the expression 'prescribed authority' was not drawn to the attention of the Court when the judgment and order of the Court dated 22nd August, 2005 came to be delivered. Counsel appearing

for the Applicant has submitted that the Applicant is not aggrieved by the final judgment of the Court and the only modification that is sought is in respect of the expression 'prescribed authority' which is in the submission of the Applicant to be confined to mean the Central Government.

3. We find no reason to review the order of the Court. It would need to be stated at the present stage that a Notice of Motion was taken out, after the disposal of the Writ Petition, by the Animal Welfare Board (Notice of Motion 270 of 2006) by which the Board sought a clarification from the Court as to whether it may continue to function as a 'prescribed authority' in view of the amendment to the rules that was effected on 8th January, 2002. The Notice of Motion by the Animal Welfare Board was occasioned as a result of a communication dated 13th April, 2006 issued by the Under Secretary in the Government of India, in the Ministry of Environment and Forests (Animal Welfare Division). By his communication the Under Secretary sought an explanation from the Animal Welfare Board of the specific provisions of law or the

rules under which the sub-committee of the Board on screening of films was constituted and pending such clarification, there was a direction to the effect that no film which is ready for release should be held up for want of clearance of the Animal Welfare Board of India pending further communication from the Ministry of Environment and Forests. The Notice of Motion was dismissed on 7th September, 2006. This Court observed in its order that the application for clarification did not necessitate any further order since the order of the Court dated 22nd August, 2005 was clear in itself. This Court also observed that the Animal Welfare Board has been assigned certain functions statutorily under the Prevention of Cruelty to Animals Act, 1960 and the order of the Court did not warrant any clarification.

4. The Notice of Motion in the present case has been taken out substantially on the basis of the same provisions of Rule 2(g) of the Performing Animals (Registration) Rules, 2001 which were pressed in aid in the earlier Notice of Motion. Rule 2(g) defines the expression ' prescribed authority' to mean the Central Government

or such other authority including the Board or the State Government as may be authorized by the Central Government. Prior to the amended definition of the expression 'prescribed authority' that expression was defined to mean the Animal Welfare Board. The Board is a statutory authority constituted under the provisions of Section 5 of the Prevention of Cruelty to Animals Act, 1960 and has been vested with statutory obligations and duties under Section 9. There is nothing in the provisions of the Performing Animals (Registration) Rules, 2001 to indicate that the authority which was conferred on the Animal Welfare Board has been rescinded or withdrawn. On the contrary, Rule 2(g) as enforced does recognize that the Board itself can be a prescribed authority. The Board is constituted under Section 4 by the Central Government for the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering. Chapter V of the Act deals with performing animals and under Section 23(1) every person desirous of exhibiting or training any performing animal is required to make an application in the prescribed form to the prescribed

authority. Section 38(2)(j) under which the Central Government exercises the rule making power inter alia provides for rules governing the form in which applications for registration could be made, the particulars to be contained therein, the fees payable and the authorities to whom such applications may be made. The Board which is a statutory authority has been directed by the judgment of the Court to perform certain duties with a view to ensure that the salutary provisions of the Act in relation to the prevention of cruelty to animals are not breached. In these circumstances, we do not find any ground to review or modify the judgment and order of the Court dated 22nd August, 2005. The Motion shall accordingly stand dismissed.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)